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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of
Advanced Television Systems
and Their Impact upon the
Existing Television Broadcast
Service

Fourth Further Notice of Proposed
Rule Making and Third Notice
of Inquiry

MM Docket No. 87-268

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COMMENTS OF HOLSTON VALLEY BROADCASTING CORPORATION

Holston Valley Broadcasting Corporation (Holston) hereby submits its comments in the proposed rulemaking Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry (NPRM). Although many aspects of the proposed rulemaking deserve and no doubt will receive comment from a number of interested parties, Holston's comments at this juncture are solely on what it believes to be the proposed unconscionable treatment of the Low Power Television (LPTV) industry.

Holston is licensed and has been operating an LPTV station for four and one-half years on channel 30 in Kingsport, Tennessee (WAPK-LP [formerly W30AP]), and a second LPTV station licensed to the same community on channel 56 (W56CT) since earlier this year. Holston is also the licensee and operator of the local full service ABC-TV affiliate (WKPT-TV, channel 19), another UHF facility in this very mountainous market. Operating 24 hours a day, seven days

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a week, Holston's LPTV stations (and its full service TV station) have become an important part of the Tri-City, TN/VA community. Holston's principal LPTV station, WAPK-LP, is the local United Paramount Network (UPN) affiliate, telecasts a half hour of local news five days per week. For much of the past four-and-one-half years WAPK-LP has presented live telecasts of local meetings of the Kingsport Board of Mayor and Aldermen and delayed telecasts of meetings of the Johnson City City Commission, plus live local candidate forums, live election returns, live telecasts of parades, ball games, and other community events, and many public service announcements for local, regional, and national service organizations as well as conventional network and syndicated programming.

Since the inception of the Communications Act of 1934, it has been the intent of the Federal Communications Commission (the Commission) to foster the establishment of local broadcast stations serving the needs of local communities. Holston's WAPK-LP epitomizes this goal and provides great diversity of programming to local television viewers.¹

The Commission has set precedent with its adoption of various policies and programs which are intended to minimize whatever negative effect small entities might face in the advent of new rulemakings and new technologies.² Holston strongly believes that

¹ See Section 307 of the Communications Act relating to the efficient distribution of the spectrum.

² See, for example, the small business protections adopted by Congress in the auction provisions of the Communications Act.

the policies set forth in the Commission's plans for Advanced Television (ATV) will decimate the LPTV industry. These effects are a result of the Commission's decision to exclude low power television broadcasters from this important rulemaking and thus to continue to maintain the LPTV industry's secondary status as the industry moves to advanced television broadcasting.

Some twelve years ago the Commission created the LPTV service with the goal of increasing diversity and localism in television broadcasting. The Commission has adhered to the principle that diversification better serves the needs of the public at large. The Commission firmly stated that the vitality of the U.S. system of broadcasting depended upon diversification of programming and service content and upon diversification of ownership.

The low power television³ medium is a niche broadcasting service with the potential to provide specialized programming to specialized markets, particularly under-served and ethnic communities, a potential which is already being realized in many communities. According to industry experts, approximately 42% of LPTV stations provide the public with programming for special demographic populations, reflecting fulfillment of the Commission's initial goal when establishing LPTV service in 1983. Moreover, LPTV stations on the air in the U.S. now number more than 1751.⁴ The present LPTV figure comprises 1,193 UHF and 558 VHF stations,

³ Report and Order, March 4, 1982

⁴Part 74 CFR and Report and Order, 1982.

compared to the nation's full power or so-called "full service" commercial and educational stations which now number approximately 1,542 stations.⁵

Despite the rapid growth of the LPTV industry and the fact that LPTV broadcasters have made great efforts in the last decade to acquaint the Commission with the unique and diverse services that LPTV provides to the public and to record the successes of the LPTV industry in achieving the Commission's stated goals of providing universal, over-the-air, television service, the Commission's Fourth Notice of Proposed Rulemaking and Third Notice of Inquiry has excluded low power broadcasters from any consideration in the transition plan and in proposed ATV policies. Even worse than the prospect that most (or depending upon the policy the Commission ultimately adopts, perhaps all) LPTV stations will be unable to simulcast their programming in ATV standards during the ATV transition period, the Commission's seeming intention to move all of broadcast television to UHF and then, following the ATV transition period, to repackage the UHF band leaves little prospect that many LPTV stations will find any channel on which to operate in an ATV mode after the transition period is complete.

As a "full service" TV station licensee, Holston fully appreciates the need to provide full service stations with a second channel during the period of transition to ATV. We appreciate the increased range of new service capabilities that digital technology

⁵ See station totals in most recent Public Notice.

will bring to television, as well as the capability to deliver multiple program streams over one 6 MHz channel which the conversion to digital will permit; however, as an LPTV licensee Holston feels the implementation of these promised new services neither justifies nor requires the exclusion of the LPTV segment of the television broadcasting industry from the future of free over-the-air broadcasting. The Commission has stated that its initial reason for exclusion of LPTV is that the broader public interest would be best served by limiting initial channel allocation to existing eligible (i.e. "full service") broadcasters, but are not over 800 licensed LPTV entrepreneurs broadcasters? How can the Commission seriously consider choking to death the LPTV industry, which the Commission spawned has nurtured for so many years?

In compliance with the Commission's principles of universal service⁶ and the U.S. Constitution, any technical standards used to develop an allotment table should be readily and equally available to all broadcasters and the diverse audiences they serve, not just full power broadcasters. To exclude LPTV broadcasters from the ATV proceeding is to say that the Commission does not believe in its long-stated standard that the public interest of all Americans would be served if all Americans could participate in the continued reception of television.

The Commission should continue to value localism in this era of "megamergers." LPTV is one of the few remaining services that focuses on local content. It is the local programming of low power

⁶ See Sixth Report and Order (1952).

television broadcasters which brings services and programming to under-served and ethnic communities throughout the U.S. Furthermore, one of the Commission's goals in inaugurating LPTV service was to bring local programming to communities which had never been served or had been under-served by full power television. Equally as important was the desire to increase diversity in ownership in television broadcasting among women and minorities. Opportunities for minority members to enter the world of full power television are considerably fewer than in the LPTV industry where less capital is required. Currently there are 31 "full service" TV stations owned by minority members versus 124 LPTV stations owned by minorities.

With respect to the recovery of spectrum, in the Second Report/Further Notice, the Commission put broadcasters on notice that when ATV becomes the prevalent medium, broadcasters would be required to surrender a 6 MHz channel and cease broadcasting in NTSC.⁷ Later, in the Third Report/Further Notice, the Commission stated its plan to award broadcasters interim use of an additional 6 MHz channel to permit a smooth, efficient transition to the improved ATV technology with as much certainty and as little inconvenience to the public and the industry as possible.

It is evident that the Commission remains committed to the recovery of spectrum from full power broadcasters, yet it is not evident that the Commission is committed to any real rights for LPTV broadcasters with the advent of digital technology. Indeed

⁷ Second Report/Further Notice, 7 FCC Rcd 3340, 3353 (1992).

there is the serious possibility that a vast number of existing LPTV stations will be eliminated. The Communications Act of 1934 mandates that the Commission allocate spectrum in a manner which is, among other things, efficient. 47 U.S.C. Section 307 (b). As stated by Chairman Reed Hundt in his speech at the Pittsburgh Law School, the Commission ought to apply the public interest standard, with concrete duties imposed on broadcasters. Responsible LPTV broadcasters are willing to accept such programming responsibilities in return for primary status as licensees.

LPTV stations should not be forced out of business in the Commission's zeal to find spectrum to be auctioned for other services. Adequate notice of any proposed allotment table should be given, along with disclosure of all technical standards so LPTV broadcasters may recommend changes in individual allotments that will minimize any adverse impact upon them.

LPTV stations should be given an opportunity to apply for remaining ATV spectrum after full power stations have applied for ATV spectrum, but before the general public is eligible to apply and certainly before bidders are welcomed to an auction. Furthermore, any spectrum repackaging or recapture should consider such possibilities as establishing a guard band between full power TV and non-broadcast services and therefore taking LPTV broadcasters into account.

Holston urges the inclusion of LPTV licensees as low power primary licensees in the new ATV service, even if it should prove impossible for the LPTV broadcaster to utilize two channels during

the transition period. Holston firmly believes that any action by the Commission, which in effect squeezes out and kills LPTV is a violation of the Constitutional rights of the LPTV broadcasters, who were in effect induced to join in the Commission's plan for a low power community TV service.

For the foregoing reasons, Holston respectfully submits that the Commission should revise its proposals in its Fourth Further Notice of Proposed Rulemaking and Third Notice of Inquiry to insure a more spectrally efficient ATV allotment table and to accommodate low power television broadcasters with an ATV simulcast channel. The ATV operations of LPTV licensees should be granted primary status, albeit at lower power levels than "full service" ATV licensees are allowed. In situations demonstrating "worst case" allotment conditions in which allocation of an interim simulcast channel for LPTV licensees is not possible, the Commission should at least provide LPTV broadcasters with a single channel, which is secure so that the LPTV broadcaster can move from NTSC operation to ATV operation on the same channel at a time when the LPTV licensee feels the transition to ATV is significantly complete in the respective licensee's particular market.

Respectfully submitted,

HOLSTON VALLEY
BROADCASTING CORPORATION

By: 

George E. DeVault, Jr., Pres.
Box WKPT
Kingsport, Tennessee 37662

Dated: November 15, 1995